

AMENDED IN SENATE SEPTEMBER 9, 1999

AMENDED IN SENATE AUGUST 23, 1999

AMENDED IN SENATE JUNE 10, 1999

AMENDED IN ASSEMBLY MAY 10, 1999

AMENDED IN ASSEMBLY APRIL 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 519

Introduced by Assembly Member Aroner

February 18, 1999

An act to amend Sections 51.9 and 52 of the Civil Code, relating to sexual harassment.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as amended, Aroner. Sexual harassment.

(1) Existing law provides that a person is liable in a cause of action for sexual harassment when the plaintiff proves, among other things, that the defendant has made sexual advances, solicitations, sexual requests, or demands for sexual compliance by the plaintiff that were unwelcome and persistent and severe, continuing after a request by the plaintiff to stop.

This bill would revise that cause of action by ~~extending it to conduct by an agent acting on behalf of a defendant where the agent has a business, service, or professional relationship with the plaintiff~~, extending it to apply to verbal, visual, or physical conduct of a sexual nature or hostile nature based on gender,

requiring the conduct to be pervasive rather than persistent, deleting the requirement that the conduct continue after a request by the plaintiff to stop, and specifying that the cause of action applies to an injury involving emotional distress or violation of a statutory or constitutional right. The bill would also delete the requirement that the complaint and answer be verified and would specify that the above definitions and standards only apply to a cause of action brought under this provision.

(2) Existing law provides that whoever denies the right to be free from violence or intimidation because of their race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, position in a labor dispute, as specified, or similar characteristics, or who aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right, exemplary damages, and attorney's fees as may be determined by the court.

This bill would extend these provisions to persons having a cause of action for sexual harassment discussed above. The bill would also incorporate additional changes to Section 52 of the Civil Code proposed by AB 1268, contingent upon its prior enactment.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51.9 of the Civil Code is
2 amended to read:

3 51.9. (a) A person is liable in a cause of action for
4 sexual harassment under this section when the plaintiff
5 proves all of the following elements:

6 (1) There is a business, service, or professional
7 relationship between the plaintiff and defendant ~~or an~~
8 ~~agent acting on behalf of the defendant.~~ Such a
9 relationship may exist between a plaintiff and a person,
10 including, but not limited to, any of the following persons:

11 (A) Physician, psychotherapist, or dentist. For
12 purposes of this section, "psychotherapist" has the same

1 meaning as set forth in paragraph (1) of subdivision (c)
2 of Section 728 of the Business and Professions Code.

3 (B) Attorney, holder of a master's degree in social
4 work, real estate agent, real estate appraiser, accountant,
5 banker, trust officer, financial planner loan officer,
6 collection service, building contractor, or escrow loan
7 officer.

8 (C) Executor, trustee, or administrator.

9 (D) Landlord or property manager.

10 (E) Teacher.

11 (F) A relationship that is substantially similar to any of
12 the above.

13 (2) The defendant has made sexual advances,
14 solicitations, sexual requests, demands for sexual
15 compliance by the plaintiff, or engaged in other verbal,
16 visual, or physical conduct of a sexual nature or of a hostile
17 nature based on gender, that were unwelcome and
18 pervasive or severe.

19 (3) There is an inability by the plaintiff to easily
20 terminate the relationship.

21 (4) The plaintiff has suffered or will suffer economic
22 loss or disadvantage or personal injury, including, but not
23 limited to, emotional distress or the violation of a
24 statutory or constitutional right, as a result of the conduct
25 described in paragraph (2).

26 (b) In an action pursuant to this section, damages shall
27 be awarded as provided by subdivision (b) of Section 52.

28 (c) Nothing in this section shall be construed to limit
29 application of any other remedies or rights provided
30 under the law.

31 (d) The definition of sexual harassment and the
32 standards for determining liability set forth in this section
33 shall be limited to determining liability only with regard
34 to a cause of action brought under this section.

35 SEC. 2. Section 52 of the Civil Code is amended to
36 read:

37 52. (a) Whoever denies, aids or incites a denial, or
38 makes any discrimination or distinction contrary to
39 Section 51 or 51.5, is liable for each and every offense for
40 the actual damages, and any amount that may be

1 determined by a jury, or a court sitting without a jury, up
2 to a maximum of three times the amount of actual
3 damage but in no case less than one thousand dollars
4 (\$1,000), and any attorney's fees that may be determined
5 by the court in addition thereto, suffered by any person
6 denied the rights provided in Section 51 or 51.5.

7 (b) Whoever denies the right provided by Section 51.7
8 or 51.9, or aids, incites, or conspires in that denial, is liable
9 for each and every offense for the actual damages
10 suffered by any person denied that right and, in addition,
11 the following:

12 (1) An amount to be determined by a jury, or a court
13 sitting without a jury, for exemplary damages.

14 (2) A civil penalty of twenty-five thousand dollars
15 (\$25,000) to be awarded to the person denied the right
16 provided by Section 51.7.

17 (3) Attorney's fees as may be determined by the court.

18 (c) Whenever there is reasonable cause to believe that
19 any person or group of persons is engaged in conduct of
20 resistance to the full enjoyment of any of the rights
21 hereby secured, and that conduct is of that nature and is
22 intended to deny the full exercise of the rights herein
23 described, the Attorney General, any district attorney or
24 city attorney, or any person aggrieved by the conduct
25 may bring a civil action in the appropriate court by filing
26 with it a complaint. The complaint shall contain the
27 following:

28 (1) The signature of the officer, or, in his or her
29 absence, the individual acting on behalf of the officer, or
30 the signature of the person aggrieved.

31 (2) The facts pertaining to the conduct.

32 (3) A request for preventive relief, including an
33 application for a permanent or temporary injunction,
34 restraining order, or other order against the person or
35 persons responsible for the conduct, as the complainant
36 deems necessary to insure the full enjoyment of the rights
37 herein described.

38 (d) Whenever an action has been commenced in any
39 court seeking relief from the denial of equal protection of
40 the laws under the Fourteenth Amendment to the

1 Constitution of the United States on account of race,
2 color, religion, sex, national origin, or disability, the
3 Attorney General or any district attorney or city attorney
4 for or in the name of the people of the State of California
5 may intervene in the action upon timely application if the
6 Attorney General or any district attorney or city attorney
7 certifies that the case is of general public importance. In
8 that action, the people of the State of California shall be
9 entitled to the same relief as if it had instituted the action.

10 (e) Actions under this section shall be independent of
11 any other remedies or procedures that may be available
12 to an aggrieved party.

13 (f) Any person claiming to be aggrieved by an alleged
14 unlawful practice in violation of Section 51 or 51.7 may
15 also file a verified complaint with the Department of Fair
16 Employment and Housing pursuant to Section 12948 of
17 the Government Code.

18 (g) Nothing in this section shall be construed to
19 require any construction, alteration, repair, structural or
20 otherwise, or modification of any sort whatsoever,
21 beyond that construction, alteration, repair, or
22 modification that is otherwise required by other
23 provisions of law, to any new or existing establishment,
24 facility, building, improvement, or any other structure,
25 nor shall anything in this section be construed to
26 augment, restrict, or alter in any way the authority of the
27 State Architect to require construction, alteration, repair,
28 or modifications that the State Architect otherwise
29 possesses pursuant to other laws.

30 (h) For the purposes of this section, “actual damages”
31 means special and general damages. This subdivision is
32 declaratory of existing law.

33 SEC. 3. Section 52 of the Civil Code is amended to
34 read:

35 52. (a) Whoever denies, aids or incites a denial, or
36 makes any discrimination or distinction contrary to
37 Section 51 or 51.5, is liable for each and every offense for
38 the actual damages, and any amount that may be
39 determined by a jury, or a court sitting without a jury, up
40 to a maximum of three times the amount of actual

1 damage but in no case less than one thousand dollars
2 (\$1,000), and any attorney's fees that may be determined
3 by the court in addition thereto, suffered by any person
4 denied the rights provided in Section 51 or 51.5.

5 (b) Whoever denies the right provided by Section 51.7
6 or 51.9, or aids, incites, or conspires in that denial, is liable
7 for each and every offense for the actual damages
8 suffered by any person denied that right and, in addition,
9 the following:

10 (1) An amount to be determined by a jury, or a court
11 sitting without a jury, for exemplary damages, if the
12 defendant is guilty of fraud, malice, or oppression.

13 (2) A civil penalty of twenty-five thousand dollars
14 (\$25,000) to be awarded to the person denied the right
15 provided by Section 51.7.

16 (3) Attorney's fees as may be determined by the court.

17 (c) Whenever there is reasonable cause to believe that
18 any person or group of persons is engaged in conduct of
19 resistance to the full enjoyment of any of the rights
20 hereby secured, and that conduct is of that nature and is
21 intended to deny the full exercise of the rights herein
22 described, the Attorney General, any district attorney or
23 city attorney, or any person aggrieved by the conduct
24 may bring a civil action in the appropriate court by filing
25 with it a complaint. The complaint shall contain the
26 following:

27 (1) The signature of the officer, or, in his or her
28 absence, the individual acting on behalf of the officer, or
29 the signature of the person aggrieved.

30 (2) The facts pertaining to the conduct.

31 (3) A request for preventive relief, including an
32 application for a permanent or temporary injunction,
33 restraining order, or other order against the person or
34 persons responsible for the conduct, as the complainant
35 deems necessary to insure the full enjoyment of the rights
36 herein described.

37 (d) Whenever an action has been commenced in any
38 court seeking relief from the denial of equal protection of
39 the laws under the Fourteenth Amendment to the
40 Constitution of the United States on account of race,

1 color, religion, sex, national origin, or disability, the
2 Attorney General or any district attorney or city attorney
3 for or in the name of the people of the State of California
4 may intervene in the action upon timely application if the
5 Attorney General or any district attorney or city attorney
6 certifies that the case is of general public importance. In
7 that action, the people of the State of California shall be
8 entitled to the same relief as if it had instituted the action.

9 (e) Actions under this section shall be independent of
10 any other remedies or procedures that may be available
11 to an aggrieved party.

12 (f) Any person claiming to be aggrieved by an alleged
13 unlawful practice in violation of Section 51 or 51.7 may
14 also file a verified complaint with the Department of Fair
15 Employment and Housing pursuant to Section 12948 of
16 the Government Code.

17 (g) Nothing in this section shall be construed to
18 require any construction, alteration, repair, structural or
19 otherwise, or modification of any sort whatsoever,
20 beyond that construction, alteration, repair, or
21 modification that is otherwise required by other
22 provisions of law, to any new or existing establishment,
23 facility, building, improvement, or any other structure,
24 nor shall anything in this section be construed to
25 augment, restrict, or alter in any way the authority of the
26 State Architect to require construction, alteration, repair,
27 or modifications that the State Architect otherwise
28 possesses pursuant to other laws.

29 (h) For the purposes of this section, “actual damages”
30 means special and general damages. This subdivision is
31 declaratory of existing law.

32 SEC. 4. Section 3 of this bill incorporates amendments
33 to Section 52 of the Civil Code proposed by both this bill
34 and AB 1268. It shall only become operative if (1) both
35 bills are enacted and become effective on January 1, 2000,
36 (2) each bill amends Section 52 of the Civil Code, and (3)
37 this bill is enacted after AB 1268, in which case Section 2
38 of this bill shall not become operative.

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